

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

In the Matter of)
)
 AVR, L.P. d/b/a)
 Hyperion of Tennessee, L.P.)
)
 Petition for Preemption of Tennessee)
 Code and Tennessee Regulatory Authority)
 Decision Denying Hyperion's Application)
 Requesting Authority to Provide Service)
 in Tennessee Rural LEC Service Areas)
)

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

CC Docket No. 98-92

COMMENTS OF WORLDCom, INC.

WorldCom, Inc. ("WorldCom"), by its attorneys, hereby files initial comments in support of the petition for preemption ("Petition") filed by AVR, L.P. d/b/a Hyperion of Tennessee, L.P. ("Hyperion") on May 29, 1998 in the above-captioned proceeding.¹ WorldCom urges the Commission to grant the Hyperion Petition and preempt the pertinent Tennessee law and Tennessee Regulatory Authority ("TRA") decision prohibiting Hyperion and other competitive local exchange carriers ("CLECs") from providing local service in competition with incumbent local exchange carriers ("ILECs").

I. THE COMMISSION SHOULD PREEMPT TENNESSEE LAW INsofar AS IT PROHIBITS ANY LOCAL COMPETITION WITH ILECs

Section 253(a) of the Telecommunications Act of 1996 ("1996 Act") grants the Commission the authority to preempt any state actions that directly prohibit, or have the effect

¹ The Common Carrier Bureau issued a Public Notice establishing a pleading cycle. Public Notice, DA 98-1115, released June 12, 1998.

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of prohibiting, competitive entry into a telecommunications market.² Further, Section 253(d) provides the Commission with the jurisdiction to preempt the enforcement of any statute, regulation, or legal requirement imposed by a state that violates subsection (a).³ The Commission has read these two provisions together as requiring the Commission to preempt "not only express restrictions on entry, but also restrictions that indirectly produce that result."⁴

The Hyperion Petition presents a compelling case for preemption. Section 65-4-201(d) of the Tennessee Code prohibits any entity from competing in any area of Tennessee served by ILECs with fewer than 100,000 access lines. The TRA, in granting Hyperion's request for a Certificate of Public Convenience and Necessity to provide local service in Tennessee, included this restriction as an express condition of operation. In a later ruling, the TRA denied Hyperion's request for an extension of authority, holding that Section 65-4-201(d) precluded competition in the geographic areas Hyperion sought to serve.⁵

WorldCom provides competitive local service, both facilities-based and on a resale basis, in several markets in Tennessee. In WorldCom's estimation, there is no rational basis for the restriction currently contained in the Tennessee Code, except to prevent the introduction of competition in rural areas of Tennessee. While this provision might bestow a direct benefit upon a few ILECs, the 1996 Act plainly does not countenance such an obvious, discriminatory, and

² 47 U.S.C. Section 253(a) (1998).

³ 47 U.S.C. Section 253(d).

⁴ Petitions for Declaratory Ruling and/or Preemption of Certain Provisions of the Texas Public Utility Regulatory Act of 1995, CCB Pol 96-13, 96-14, 96-16- 96-19, Memorandum Opinion and Order, 13 FCC Rcd 3460 (1997) at para. 41 ("Texas Preemption Order").

⁵ Hyperion Petition at 4-5.

anti-consumer restriction on competition.

The need to preempt enforcement of Section 65-4-201(d) of the Tennessee Code is all the more apparent when one considers the ILECs' oft-repeated rhetoric about the failure of local competition to reach more rural areas of the country. The ILECs routinely have claimed that CLECs show little interest in serving rural regions such as those in Tennessee, preferring instead to concentrate on more urbanized markets. Regardless of the actual veracity of these claims (which WorldCom would strongly dispute), Hyperion has presented a straightforward case that it wants to deploy its advanced fiber network outward from Nashville to adjacent areas, so that it may provide service to customers now served exclusively by the incumbent LEC. This is precisely the type of head-to-head, facilities-based competition that the ILECs claim to support, and this Commission should encourage. The Commission should not allow the ILECs (via state legislative fiat) to get away with their hypocritical attempts to keep Hyperion and other CLECs from competing throughout Tennessee, and elsewhere.

II. CONCLUSION

The Commission should promptly grant the Hyperion Petition, and preempt the pertinent Tennessee law and Tennessee Regulatory Authority decision preventing Hyperion and other CLECs from providing local service in rural areas of Tennessee.

Respectfully submitted,

WORLDCOM, INC.



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July 13, 1998

CERTIFICATE OF SERVICE

I, Cecelia Y. Johnson, hereby certify that I have this 13th day of July, 1998, sent a copy of the foregoing "Comments of WorldCom, Inc." in CC Docket No. 98-92, by hand delivery, to the following:

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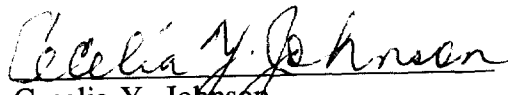
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